IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 785 of 2005
In
Notice of Motion No. 2409 of 2004
In
Suit No. 437 of 2004

Alcobex Metals Ltd. .. Appellants
V/s.
Sai Shipping Company Pvt. Ltd. & Ors. .. Respondents

Ms. F. Sethana with Ms. Deepti Das i/b. M/s. Dunmorr Sett for the Appellants
Mr. A.M. Vernekar for the Respondent No. 1
Mr. P.S. Pratap with Ms. Monic Kohli for the Respondent No. 2

CORAM : DR. S. RADHAKRISHNAN &
S.C. DHARMADHIKARI, JJ.
DATED : 07.10.2005.

P.C.:-

1. Heard the learned counsel for the Appellants and the Respondents. By this Appeal, the Appellant is challenging the order dated 17.6.2005 passed by the learned Single Judge in Notice of Motion No. 2409 of 2004, taken out by the Appellants being the Original Plaintiffs, to place the Suit for an ex-parte decree against the Defendant No. 2 for non-filing of Written Statement.

2. It appears on the day when the Notice of Motion was taken up for hearing, the Defendant No. 2 had filed detailed Affidavit in reply dated 25.10.2004, wherein in paragraph 7, 8 and 9 detailed reasons are set out for condonation of delay, pointing out the exceptional circumstances as to why the Written Statement was not filed within time. The learned Single Judge after going through, appears to have condoned the delay and taken the Written Statement on record.

3. It appears that the Written Statement in the above was dated 16.8.2004, was ready and was sought to be tendered on 20.10.2004, when an Application for ad-interim relief was made by the Plaintiffs, at which time, it appears that the learned counsel for the Plaintiffs took an objection for the same being taken on record, hence it was not taken on record on the same day.

4. Objection of the learned counsel for the Appellants is that the said order does not indicate any reasons for condoning the said delay, however we have gone through the paragraph nos. 7 to 9 of the aforesaid Affidavit of Defendant No. 2 dated 25.10.2004. Explanation given therein make out sufficient reasons for condoning the said delay.

5. We have also perused judgment of the Supreme Court in **Iridium India Telecom Ltd. v. Motorola Inc. (2005) 2 SCC 145**. We do not find any error in the order of the learned Single Judge in taking the Written Statement on record and dismissing the Notice of Motion for placing the matter for ex-parte decree. Appeal is devoid of merits, the same stands dismissed.

(DR. S. RADHAKRISHNAN, J.)

(S.C. DHARMADHIKARI, J.)